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Sup. Ct. U.S.
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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1972.

No. ~~72-459~~ 72-620

GRACE SLOAN, as State Treasurer of the Commonwealth of Pennsylvania,

and

JOSE DIAZ and ENILDA DIAZ, His Wife, WILLIAM ZIMMERSPITZ and NANCY ZIMMERSPITZ, His Wife, F. CARL KRETZMANN and KATHERYN L. KRETZMANN, His Wife, ARTHUR HARVEY and MURIEL HARVEY, His Wife, DANIEL F. X. POWELL and ANNA T. POWELL, His Wife, SETH W. WATSON, JR., and ANNE P. WATSON, His Wife, and HENRY E. CROUTER,

Appellants,

v.

ALTON J. LEMON, NEAL P. BRACKEN, and BENJAMIN S. LOWENSTEIN,

Appellees.

On Appeal From the United States District Court for the Eastern District of Pennsylvania.

BRIEF OF NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS, INC., AMICUS CURIAE.

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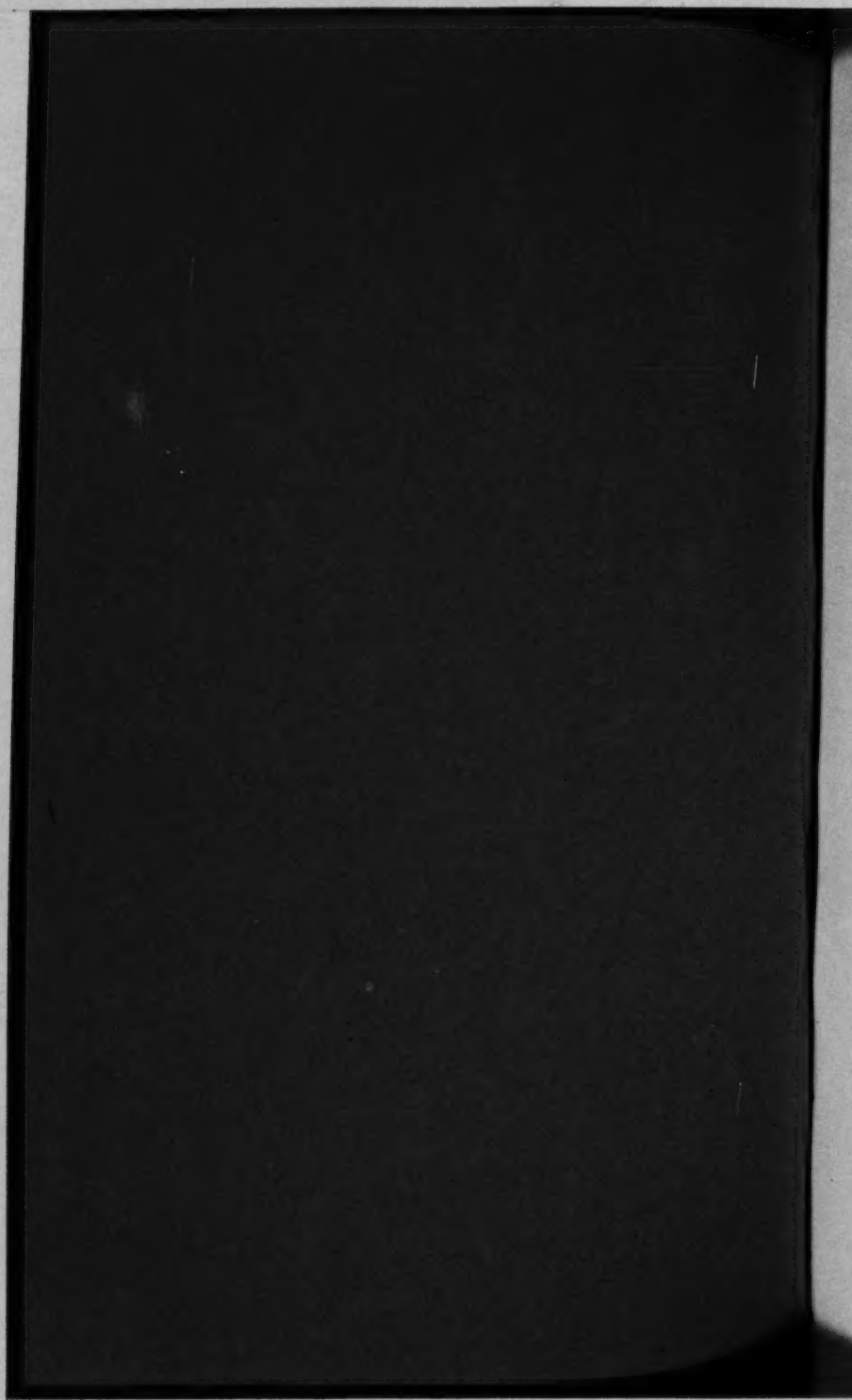

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INTEREST OF THE AMICUS.

This brief is submitted with the consent of counsel for the parties, on behalf of the National Association of Independent Schools, Inc. ("the Association"), a Massachusetts corporation.

The Association's membership comprises approximately 768 independent schools engaged in primary and secondary education in 43 states of the United States, including 56 schools in the Commonwealth of Pennsylvania. Its membership also includes 27 regional school associations (one of which is the Pennsylvania Association of Independent Schools, Amicus Curiae, below), and 16 other associations of teachers, alumni and scholarship groups connected with independent schools.

The stated purposes of the Association are

> "to assist and strengthen independent schools in the United States . . . to aid them to serve effectively the free society from which they derive their independence." National Association of Independent Schools, Inc., By-Laws, Art. II.

STATEMENT OF THE CASE.

Non-public education, embracing as it does a wide spectrum of sectarian and non-sectarian schools, which reflect the divergent religious faiths of our heritage, is an important and vital part of our total national educational establishment.

We need not here document the devastating effect the collapse of these schools would have, not only in terms of the additional financial burden to the tax-paying public, but also the severe damage to the national interests generally,

because of the wide range of educational diversity they provide. And as so effectively stated by President Nixon in his Message to the Congress of March 3, 1970, "these schools—non-sectarian, Catholic, Protestant, Jewish and other—often add a dimension of spiritual value giving children a moral code by which to live. This government cannot be indifferent to the potential collapse of such schools."

The Association files this brief because it believes there are serious national implications to the important, and never before ruled upon, constitutional issues affecting aid to parents raised by the appeal in the Pennsylvania case.

As a spokesman for the role of independent education in a free democratic society, we laud the Pennsylvania program of assistance to education that gives aid to parents.

To say, as some critics do—and without a shred of evidence to support it—that the parent acts as a mere conduit to the school, is to denigrate the very stuff of which this country's greatness was made and to undermine the rock upon which our Constitution and Bill of Rights is grounded—personal freedom and the right of each individual to make his own free choice.

Where the parent is the recipient of state aid, he alone decides how and where the funds are applied and thus effectively cuts off state control or participation, thereby enabling the state to aid its legitimate interests in secular education, and at the same time, to preserve, in the words of the Chief Justice, the spirit of "benevolent neutrality" which will neither advance nor inhibit religion.

This is in the best tradition of a country that treasures its private institutions and the freedom and rights of individuals. Far from offending the Constitution, tuition aid to parents supports and reinforces the very principles the Constitution was designed to protect.

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For the reasons set forth above, and in the jurisdictional statement of appellant Henry E. Crouter, which is incorporated by reference herein, the National Association of Independent Schools, Inc. urges this Court to assume jurisdiction of the appeal and to determine after full consideration of briefs and oral argument, whether the Pennsylvania Parent Reimbursement Act is constitutional under the First Amendment.

Respectfully submitted,

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